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NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS et al. v. STATE COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS.

June 15, 1905.

[51 S. E. 166.]

CONSTITUTIONAL LAW—REVIEW OF STATUTES—CANON OF CONSTRUCTION—IMPAIRMENT OF CONTRACTS—REVOCATION OF CORPORATE POWERS—POWERS OF STATES—EXCLUSION OF FOREIGN CORPORATIONS—INTERSTATE COMMERCE—EQUITY—JURISDICTION—PROPERTY RIGHTS.

1. A statute will not be declared unconstitutional unless it is palpably repugnant to the Constitution, and it is not sufficient that it be unjust and oppressive in some of its provisions, or that it violate the natural, social, or political rights of the citizen, unless it is shown that such injustice is prohibited or that such rights are guarantied by the Constitution.

[Ed. Note.—For cases in point, see vol. 10, Cent. Dig. Constitutional Law, secs. 37, 38.]

2. Act Feb. 17, 1900, constituting certain persons a body corporate, and giving the corporation so created full and exclusive authority and jurisdiction to grant charters to subordinate councils of a certain beneficial order, and thereby in effect annulling the prior existing right of a foreign corporation to propagate and transact the business of the order within the state, does not impair the obligation of contracts, within the inhibition of the federal Constitution.

3. A foreign corporation controlling the subordinate councils of a beneficial association with a state is not engaged in interstate commerce, in such sense as to preclude the Legislature from excluding it from the state.

4. A charter authorizing a corporation to organize subordinate councils of a beneficial association, to raise funds for the relief of members and their families, and to defray funeral expenses and other cases of distress, gives rise to possible rights of property which are within the protection of a court of equity.

REAGER'S ADM'R et al. v. CHAPPELEAR et al.

June 15, 1905.

[51 S. E. 170.]

ADMINISTRATORS — ACTIONS — PARTIES — JOINDER OF ADMINISTRATOR AND DEBTOR—EQUITY — PRACTICE — ORDER OF REFERENCE — HARMLESS ERROR—PLEADING—ADMISSIONS OF ANSWERS—CONSTRUCTION—PLEADING—VARIANCE—FAILURE TO AMEND—ADMINISTRATORS—DEBTORS OF ESTATE—FAILURE TO COLLECT—LIABILITY.

1. A distributee of a decedent's estate may join in one suit the administrator and a debtor of the estate, where both are necessary parties for a settlement of the estate, and the administrator and debtor were on intimate terms with the decedent, who intrusted them with the management of her business, and each of them was indebted to the estate, and the adminis-

trator had not charged his own indebtedness nor attempted to collect that of the debtor.

2. Complainant must make out his case, and prove the charges of his bill showing that he has the right to demand an account, in order to entitle him to an order of reference.

3. The premature entry of an order of reference was harmless where no account was taken thereunder.

4. Where an answer is used in support of the bill, the whole thereof must be taken together, and explanations given must be considered in connection with the admissions made.

5. A petition against an administrator and a debtor of the estate alleged that a third person had borrowed money from the decedent and repaid it to the administrator. The administrator, in his answer, denied the receipt of the money. The debtor alleged that the third party handed the money in question over to her, and that she gave it to decedent. The third party testified that he paid the money to the debtor, and that the allegation of the bill was an error. *Held* that, in the absence of an amendment to the bill, there could be no recovery of the sum of money in question.

6. An administrator cannot be charged with the amount of a debt belonging to the estate which he has never collected, and which has not been established against the debtor so that he can be deemed guilty of laches in having failed to collect it.

ATLANTIC COAST LINE R. CO. v. WATKINS.

June 15, 1905.

[51 S. E. 172.]

RAILROADS—FIRES—CONBUSTIBLE MATERIAL ON RIGHT OF WAY—DUE CARE—
APPEAL—REVIEW—QUESTIONS OF FACT—EVIDENCE—SUFFICIENCY OF EVIDENCE.

1. A railroad company owes the duty of keeping its right of way clear of combustibile materials liable to ignition by sparks from engines.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, sec. 1673.]

2. Where a railroad company equips its locomotives with the best known appliances to prevent the escape of sparks, keeps the locomotives in good repair, and keeps its right of way clear of combustibile materials, it is, as a general rule, not liable for fires caused by sparks from locomotives.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1657-1676.]

3. Though an appellate court will not reverse the jury's finding on an issue of fact unless there has been a plain deviation from the evidence, nevertheless it will not hesitate to do so if satisfied that the evidence is plainly insufficient to support the findings.